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**NOT FOR PUBLICATION**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Tony Hoffman,  
Plaintiff,

vs.

Michael J. Astrue, Commissioner of Social  
Security,  
Defendant.

No. CV-09-896-PHX-GMS

**ORDER**

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On November 30, 2009, Plaintiff Tony Hoffman (“Plaintiff”) filed a Motion to Remand the instant action back to the Social Security Administration. (Dkt. # 14.) For the following reasons, the Court grants the Motion.

**DISCUSSION**

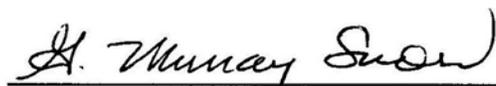
Under the Social Security Act, 42 U.S.C. § 401, *et seq.* (the “Act”), there are only two kinds of possible remands. *Melkonyan v. Sullivan*, 501 U.S. 89, 99 (1991). “Under sentence four” of § 405(g) of the Act, “a district court may remand in conjunction with a judgment affirming, modifying, or reversing the [Commissioner’s] decision.” *Id.* at 99–100 (citing 42 U.S.C. § 405(g)). “Under sentence six” of that Section, “the district court may remand in light of additional evidence without making any substantive ruling as to the correctness of

1 the [Commissioner's] decision, but only if the claimant shows good cause for failing to  
2 present the evidence earlier.”<sup>1</sup> *Id.* at 100.

3 In this case, the Court finds that Plaintiff has presented new and material evidence that  
4 was not considered when this action was before the administrative tribunals. He has also  
5 demonstrated good cause for not presenting this evidence earlier. The instant appeal arises  
6 out of Plaintiff's 2008 administrative hearing, wherein the Administrative Law Judge  
7 (“ALJ”) precluded Plaintiff from presenting certain medical evidence of his disability.  
8 Relying on the doctrine of *res judicata*, the ALJ determined that such evidence could not be  
9 considered because a previous administrative tribunal had determined that such evidence was  
10 insufficient to demonstrate that Plaintiff was disabled. The adverse administrative decision,  
11 to which the ALJ gave *res judicata* effect, however, was recently vacated by another  
12 Division of this Court. (*See* Dkt. # 14, Ex. A.) Because the previous decision has been  
13 vacated, it appears that the excluded medical evidence should now be considered in the  
14 instant action. Accordingly, Plaintiff has presented material evidence that was not considered  
15 by the ALJ, and Plaintiff has further demonstrated good cause for his failure to present that  
16 evidence earlier. *See Melkonyan*, 501 U.S. at 100.

17 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Remand to the Social  
18 Security Administration is **GRANTED**. (Dkt. # 14.) The Clerk of the Court is directed to  
19 remand back to the Social Security Administration.

20 DATED this 11th day of March, 2010.

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23 \_\_\_\_\_  
24 G. Murray Snow  
25 United States District Judge

26 \_\_\_\_\_  
27 <sup>1</sup>Sentence six also authorizes the district court to remand on motion by the Secretary  
28 made before the Secretary has filed a response in the action. That subcategory of sentence  
six remands, however, is not implicated in this case.